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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/828,005	03/27/97	LAVON G	6563

QM32/0627

RODDY M BULLOCK
THE PROCTER AND GAMBLE COMPANY
WINTON HILL TECHNICAL CENTER
6300 CENTER HILL AVENUE
CINCINNATI OH 45224

EXAMINER	
REICHLE,K	
ART UNIT	**PAPER NUMBER**
3761	18

DATE MAILED: 06/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/828005	LaVon et al
Examiner	**Group Art Unit**
Reichle	3761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 4-3-2000.

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 11-12, 14, 17, 20, 32-33, 37-39 and 43-44 is/are pending in the application.

Of the above claim(s)_____ is/are withdrawn from consideration.

☐ Claim(s)_____ is/are allowed.

☒ Claim(s) 11-12, 14, 17, 20, 32-33, 37-39 and 43-44 is/are rejected.

☐ Claim(s)_____ is/are objected to.

☐ Claim(s)_____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The proposed drawing correction, filed on 4-3-2000 is ☒ approved ☐ disapproved. in part

☒ The drawing(s) filed on 3-27-97 is/are objected to by the Examiner.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number)_____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received:_____.

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s)._____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other_____

Office Action Summary

The election of species requirement set forth on pages 2-3 of the last Office Action, Paper No. 16, is deemed proper and made FINAL. See also discussion of Applicant's remarks with regard to this issue, infra.

The abstract would be in better form if on line 6, before "at least one", -- the -- were reinserted.

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on April 3, 2000 have been approved in part.

Figures 1-2, sheet 1/12 only is approved. Sheet 2/12, Figures 3-4, is not approved for the same reasons as set forth on page 4, 1st paragraph of the last office action. Sheets 3/12, 5/12 and 8/12 are not approved because they do not show the changes made to the originally filed drawings in red and the 6-2-98 drawings were not approved.

Therefore Figures 1-2 file 4-3-2000, Figures 4-5, 7 and 14-16 as filed 11-23-98 and 3, 6, and 8-13 as originally filed remain in the file. Approval of the formal drawings is held in abeyance until all drawing objections are overcome.

The drawings are objected to for the reasons set forth on page 4, second full paragraph of the last Office Action, Paper No. 16.

The specification is objected to for the reasons set forth on page 4, lines 15-16 and last two lines, with regard to the dependent claims only, of the last office action, Paper No 16.

The amendment filed 5-3-99 is still objected to under 35 USC 132 for the reasons set forth on page 5, first two full paragraphs, with respect to claims 12, 14, 17, 20, 37, 38, only, of the last office action, paper No. 16.

Claims 12, 14, 17, 20, 32 and 37-39 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See discussion in preceding objection.

Claims 12-14, 17, 20, 32 and 37-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- The rejection of claims 12, 14, 17, 20, 32, 37, 38 and 39 set forth on page 6, lines 1-4 of the last Office Action ,Paper No. 16, is repeated here.

With regard to amended claim 11, Applicants now requiresat least one removable absorbent core component, i.e. a second absorbent core component removably disposed in the first waist region and a non-removable first absorbent core component disposed in at least the crotch region. In light of the specification, e.g., page 3, lines 13-26, the limitations of non-removability or removability must be interpreted as functional, i.e. capability rather than structural limitations, i.e. in other words, removability is determined by the user who can or cannot remove as desired but there is no structure which prevents removal. Yet Applicants arguments infer that such is a structural limitation. It

noted that should the specification be amended to clarify that such is a structural limitation, i.e. by claiming some permanant attachment such would be considered new matter since there appears to be no dislosure that the center core compoent could not be removed if so desired. The following art rejections are based on such interpretations.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11, 33 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Schiff and Marcus .

See Figures and page 2, lines 26-91. In regard to claim 11, the Lewis device clearly includes all the claimed structure and function except for a reclosable flap and fastener and the capability of removal of the second absorbent component without removal of the article and the capability of non-removal of the first absorbent component. However, see Schiff., e.g., Figure, column 1, lines 10-18, and Marcus, Figures. To employ a reclosable flap and fastener in combination with a backsheet discontinuity as taught by Schiff and Marcus on the Lewis device would be obvious to one of ordinary skill in the art in view of the recognition that such would provide better prevention of escape of body fluids and the desirability to capture body fluids in any diaper. The capability of removal of an absorbent components without removal of the article and the capability of non removal of an absorbent component necessarily flows and/or is inevitably present in the teachings of the prior art considered by the Examiner especially in view of the teaching of Schiff. It is noted that Lewis does not show or disclose that the plies of the pad are

fastened together, see cited portions of Lewis. It is further noted that the claims do not require the second compoent only to be in the front waist region or the components to be of a single or specific number of layers.

Claims 11, 33 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Lewis, Schiff and Marcus. See page 2, lines 3-13 and 75-88 of Murphy. The Murphy device clearly includes all the claimed structure and function except for providing access through the backsheet or between the front and back sheets, i.e. access in Murphy is throough the front sheet a reclosealole flap and fastener and the capability of removal of the second component without removal of the article and the capability of nonremoval of the first absorbent component. However, see page 2, lines 62-91 of Lewis. To make the front sheet access of Murphy backsheet or between front and back sheets access would be obvious in view of the interchangeability as taught by Lewis. Note: the teachings of Murphy, see portions cited in rejection which do not limit access to front sheet, see also, e.g., page 1, lines 28-36 and claim 1.

Also, see Schiff, e.g., Figure, column 1, lines 10-18, and Marcus, Figures. To employ a reclosable flap and fastener in combination with a backsheet discontinuity as taught by Schiff and Marcus on the Murphy device would be obvious to one of ordinary skill in the art in view of the recognition that such would access yet provide better prevention of escape of body fluids and the desirability to capture body fluids in any diaper. The capability of removal of an absorbent component without removal of the article and the capability of nonremoval of an absorbent

component necessarily flows and/or is inevitably present in the teachings of the prior art considered by the Examiner especially in view of the teaching of Schiff.

Claims 12, 14, 17, 20, 32 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiff and Marcus or Murphy, Lewis, Schiff and Marcus as applied to claims11, 33 and 43-44 above, and further in view of Dyer et al '207.

Applicant claims the specific compositions of the core components which Lewis or Murphy do not teach. However, both Lewis and Murply teach a component which is absorbent alone or in combination with the desire of economic efficiency. See Figure 2, Background of the Invention, column 9, line 11 - column 11, line 3, column 17, lines 48-57, column 19, lines 10-30, column 29, line 4 - column 31, last line, Example II of Dyer et al. To make the absorbent core of components having a composition as taught by Dyer et al on the Lewis or Murphy device would be obvious to one ordinary skill in the art in view of the recognition that such would provide economically efficient absorbency and the desirability of such in any absorbent article.

Applicant's comments on page 3, line 6 - page 4, last line have been noted.

Applicant's remarks on pages 5-6 and page 7, line 21 have been considered but are deemed nonpersuasive since the requirement made was between patentably distinct species of a single invention and Applicant's remark are directed to restrictions between two or more inventions.

Applicant's remarks on page 7, line 22 - page 10, last line have been considered but are either deemed moot in that the issue has not been repeated or deemed nonpersuasive for the

reasons discussd supra. For example, page 17, lines 14-33 discuss combinations not mixtures as claimed.

Applicant's remarks on pages 11 et seq with regard to the prior art have been considered but are deemed nonpersuasive because as discussed supra the limitation of removeability or non removeability as claimed is deemed a functional or capability limitation only. A core component which is not permanantly secured to the article possesses these capabilities.
The specification does not support permanent securement of the crotch core component.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

- A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were nessitated by Applicant's amendments to the specification and claims.

Any inquiry concerning this communication should be directed to K. Reichle at telephone number (703) 308-2617.

K. Reichle:bhw

June 17, 2000

John G. Weiss
Supervisory Patent Examiner
Group 3700